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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/656,699	09/04/2003	Loren R. Graber	20794-82667	8589

7590  
Barnes & Thornburg  
600 One Summit Square  
Fort Wayne, IN 46802

12/28/2004

EXAMINER

SALDANO, LISA M

ART UNIT PAPER NUMBER

3673

DATE MAILED: 12/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/656,699	GRABER ET AL.	
	Examiner	Art Unit	
Lisa M. Saldano	3673		

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) ☒ Responsive to communication(s) filed on 21 October 2004.

2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) ☒ Claim(s) 1-18 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.

6) ☒ Claim(s) 1-18 is/are rejected.

7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.

8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☐ All    b) ☐ Some \* c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.

2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_

4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Objections*

1. Claim 10 is objected to because of the following informalities:

Regarding claim 10, line 2, the examiner suggests that the applicant rewrite the phrase “floor of *the* second landscaping channel” to “floor of a second landscaping channel” to provide proper antecedent basis for the claim language introducing another landscaping channel liner apparatus. Appropriate correction is required.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 8, 10 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Williams (1,031,407).

Regarding claims 8 and 13, Williams discloses a metal flume or conduit that is capable of use as a landscaping channel liner comprising a longitudinally-extending trough with floor and sidewalls. The sidewalls form an edge located opposite the floor and a receptacle is formed at the edges by double flanges 4 and open flanges 7 (see Figs.4&5). A connector formed by a single

lateral flange 5 forms a connector that engages with the receptacle and is spaced apart and parallel to the longitudinally extending edge. The connector interference fits the receptacle.

Regarding claim 10, Williams discloses the floor of a second landscaping channel liner overlapping the floor of the first mentioned channel apparatus.

4. Claim 14 is rejected under 35 U.S.C. 102(b) as being anticipated by Butler (4,741,645).

Regarding claim 14, Butler discloses a continuous gutter lining having structure capable of functioning as a landscaping channel liner apparatus. The apparatus comprises a longitudinally extending trough with a floor and sidewalls (see Figs.8&9). Butler discloses a flange 40 glued to the bottom 43 of the gutter liner in the immediate region of a downspout 36 and a tubular portion 38 that extends downwardly into downspout 36. Butler further discloses that a hole 59 is made into the gutter liner strip such that runoff water can drain into the downspout adapter (see column 7, lines 53-64). The holes taught by Butler et al provide an opening for the liquid to drain into such a pipe.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 15-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Butler as applied to claim 14 above.

Butler discloses the invention described above.

Although Butler fails to explicitly disclose the features of claims 15-18, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide holes in the bottom portion of a drain to drain into another pipe and out to another part of a larger water collection system. The holes taught by Butler et al provide an opening for the liquid to drain into such a pipe. Furthermore, it would have been obvious to provide a perforated line within the trench drain floor to facilitate removal of a portion of the drain to accommodate such a pipe. In the case that removal of a bottom portion of the drain is not necessary, the trench drain's perforated portion may remain intact without compromising operation and functionality of the system.

7. Claims 1-5 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Williams (1,031,407) in view of Norton (1,237,544).

Williams discloses a metal flume or conduit that is capable of use as a landscaping channel liner comprising a longitudinally-extending trough with floor and sidewalls. The sidewalls form an edge located opposite the floor and a receptacle is formed at the edges by double flanges 4 and open flanges 7 (see Figs.4&5). A connector formed by a single lateral flange 5 forms a connector that engages with the receptacle and is spaced apart and parallel to the longitudinally extending edge. The connector interference fits the receptacle. Williams illustrates that the sidewalls and floors extend longitudinally beyond the open end of each of the longitudinally extending receptacle (see Fig.1).

However, Williams fails to disclose that the receptacles have first and second transverse open ends.

Norton discloses a flume comprising a longitudinally extending trough whereby the trough has receptacles with first and second transverse open ends.

Regarding claim 2, Norton illustrates that the receptacle is essentially flush with the second transverse end of a trough apparatus.

Regarding claims 3-5 and 7, Norton discloses first and second connectors 15 partially fitted in the ends of the receptacles wherein the connectors connect two channel liner apparatus to one another, the two channel liner apparatus overlapping on another. The connectors interference fit their respective longitudinally extending receptacles.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the invention of Williams to incorporate a longitudinally extending receptacle with first and second transverse open ends, as taught by Norton, because Norton teaches a functional equivalent of connecting multiple trough apparatus to one another through another receptacle and connection method.

8. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Williams in view of Norton, as applied to claim 4 above, in further view of Becker et al (5,718,537).

Williams and Norton disclose the features as described above.

However, Williams and Norton fail to disclose spikes extending from the sidewalls of the inventions.

Becker et al disclose a polymeric trench drain 10 that is capable of being used as a liner (see column 1, lines 35-40). Becker et al illustrate a longitudinally extending trough with a floor 14 and sidewalls 12 (see Fig. 1). The sidewalls define a longitudinally extending edge comprising seepage lip 29. Becker et al disclose rods or spikes 36 that extend from a sidewall of the trench drain and that are secured to the ground.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the invention of Williams to comprise spikes, as taught by Becker et al, because the spikes assist in maintaining the invention at a desired location in the adjacent ground illustrates by Williams in Fig.1.

9. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Williams as applied to claim 8 above in view of Norton (1,237,544).

Williams discloses a metal flume or conduit that is capable of use as a landscaping channel liner comprising a longitudinally-extending trough with floor and sidewalls as described above.

However, Williams fails to disclose that a receptacle from a second landscaping channel apparatus engages the connector by fitting between the longitudinally-extending edge and the connector.

Norton discloses a flume comprising a longitudinally extending trough whereby the trough has receptacles with first and second transverse open ends. The receptacle 13 of Norton engages connector 15 by fitting between the longitudinal edge of the sidewall and the connector 15 (see Figs.1&2).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the invention of Williams to incorporate a longitudinally extending receptacle with first and second transverse open ends, as taught by Norton, because Norton teaches a functional equivalent of connecting multiple trough apparatus to one another through another receptacle and connection method.

10. Claims 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Williams as applied to claim 8 above in view of Butler (4,741,645).

Williams discloses a metal flume or conduit that is capable of use as a landscaping channel liner comprising a longitudinally-extending trough with floor and sidewalls as described above.

However, Williams fails to disclose that the invention comprises removable portions.

Butler discloses a continuous gutter lining 8, which is essentially a liner for a channel (see Figs.8&9). Butler discloses a flange 40 glued to the bottom 43 of the gutter liner in the immediate region of a downspout 36 and a tubular portion 38 that extends downwardly into downspout 36. Butler further discloses that a hole 59 is made into the gutter liner strip such that runoff water can drain into the downspout adapter.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the drain of Williams to provide holes in the bottom portion, as taught by Butler et al, because the drains may, and commonly do, drain into another pipe and out to another part of a larger water collection system. The holes taught by Butler et al provide an opening for the liquid



to drain into such a pipe. Furthermore, it would have been obvious to provide a perforated line within the trench drain floor to facilitate removal of a portion of the drain to accommodate such a pipe. In the case that removal of a bottom portion of the drain is not necessary, the trench drain's perforated portion may remain intact without compromising operation of the system.

***Response to Arguments***

11. Applicant's arguments with respect to claims 1-13 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Ray (4,270,748), Biegelaar (186,529), Haucke (215,740) and Pearson (1,513,673) disclose features that are pertinent to the present application.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lisa M. Saldano whose telephone number is 703-605-1167. The examiner can normally be reached on Monday-Friday, 8:30am-5:30pm.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather C. Shackelford can be reached on 703-308-2978. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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